



STATE OF NEW JERSEY

In the Matter of Nancy Fratz,
Office of the Public Defender

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket No. 2019-398

Classification Appeal

ISSUED: NOVEMBER 23, 2018 (JET)

Nancy Fratz appeals the decision of the Division of Agency Services (Agency Services) that the proper classification of her position with the Office of the Public Defender is Assistant Deputy Public Defender 3. The appellant seeks an Assistant Deputy Public Defender 1 classification.

The record in the present matter establishes that at all relevant times the appellant was serving permanently in the title of Assistant Deputy Public Defender 3. The appellant pursued the matter of the reclassification of her position with Agency Services, which reviewed all documentation supplied by the appellant, including a Position Classification Questionnaire (PCQ), an organizational chart, and a telephone interview with the appellant and her supervisor. It found that the position is located in the Office of the Law Guardian, Appellate Unit, Office of the Public Defender. Agency Services noted that the appellant does not have supervisory responsibilities and her immediate supervisor is Meredith Pollock, Deputy Public Defender 2. Based on its review of the documentation provided, Agency Services concluded that the appellant's position was properly classified as an Assistant Deputy Public Defender 3.

On appeal, the appellant contends that Agency Services' findings of facts failed to acknowledge her leadership role as a committee member, trainer and liaison. Specifically, the appellant asserts that the June 12, 2018 classification determination excluded her responsibilities from Law Guardian committees and trainings that she helped to develop, which serves to address proposed changes in the law. The appellant explains that she conducts trainings pertaining to protocol

changes and agency policies, which was listed as her most difficult duty on her PCQ. The appellant adds that her employee evaluation outlines her job responsibilities as providing helpful and meaningful reviews of staff; briefs in accordance with the brief review process; actively participating in moot courts and case strategy discussions; providing appellate-specific advice and issue specific research guidance; collaborating with appellate section attorneys; implementing trainings, and assisting with special projects.¹ The appellant states that due to the work demand, her work region is divided into two areas and she serves as liaison for Monmouth, Ocean, Atlantic, and Cape May Counties. She adds that the liaison role provides guidance to attorneys and fulfills the role of senior attorney, and she oversees two attorneys. The appellant contends that she was reassigned to the Law Guardian, Appellate unit in January 2010, and such duties require cooperative work requiring attorneys to provide review, analysis, direction, and input pertaining to the members of the unit. She adds that appellate attorneys review briefs, attend moot court, provide input, and complete analysis for proposed arguments.

Additionally, the appellant argues that the definition provided in the job specification for Assistant Deputy Public Defender 3 indicates that attorneys participate within the regional trial office to counsel designated by the Public Defender, and the descriptions and examples of work are consistent with the criteria of a trial attorney assigned in the Office of the Public Defender. She adds that the definition section of the job specification for Assistant Deputy Public Defender 1 is consistent with the job specification for Assistant Deputy Public Defender 3, except that it adds that the attorney may serve as a Senior Trial or Appellate attorney. The appellant states that the Assistant Deputy Public Defender 1 title is not a supervisory title, and the Law Guardian, Appellate section does not have supervisory capacity for such attorneys. As such, she questions why the classification determination indicates that the Assistant Deputy Public Defender 1 title is intended to be utilized in a supervisory capacity, as it appears contradictory with previous Civil Service Commission (Commission) decisions indicating that professional titles are not meant to be supervisory titles. The appellant adds that the job description section in the job specification indicates for Assistant Deputy Public Defender titles that the Commission is empowered to cite the note section to authorize promotion. In this regard, she states that “the examples of work are for illustrative purposes only, and a particular position using the title may not perform all duties listed in the job specification. Conversely, not all duties performed on the job may be listed.” Moreover, the appellant contends that the employee evaluations

¹ The appellant contends that her supervisor indicated on her 2017 employee evaluation that “particularly noteworthy is her substantial extra effort, including active involvement in training for Law Guardian, particularly training in motion practice and other skills and techniques important for trial attorneys to utilize.” She adds that her current employee evaluation indicates, “your participation in OLG training committees is an asset to the entire organization and serves to raise the level of practice agency-wide. This is a perfect example of the ways in which our Section can support the trial regions.”

for Assistant Deputy Public Defender 1 do not require performance of supervisory duties. As such, the appellant maintains that the classification determination's reliance on an example of work that is not used by the title adversely impacts her classification determination. Finally, the appellant contends that the classification determination failed to address her duties and complexity of the work she performs which is commensurate with the job specification for Assistant Deputy Public Defender 1.²

CONCLUSION

The definition section of the job specification for Assistant Deputy Public Defender 3 states:

Under the direction of the Deputy Public Defender 1, Deputy Public Defender 2, or an Assistant Deputy Public Defender, serves in a professional capacity as the civil or criminal attorney to indigent persons who are formally charged with an offense or an indictable nature or juvenile offense, or children who are abused/neglected, or committees to mental institutions, or resolves disputes, or persons on intense supervision parole, or in need of guardianship, or who are alleged to have abused/neglected children, or are facing termination of their parental rights, or who are sexually violent predators, or who are subject to Megan's Law; performs bench trials and appeals arising from these offenses; does other related work as required.

The definition section of the job specification for Assistant Deputy Public Defender 1 states:

Under the direction of the Deputy Public Defender 1 or the Deputy Public Defender 2, serves in a professional capacity as the civil or criminal attorney to indigent persons who are formally charged with an offense of an indictable nature or juvenile offense, or children who are abused/neglected, or committees to mental institutions, or resolves disputes, or persons on intense supervision parole, or in need of guardianship, or who are alleged to have abused/neglected children, or are facing termination of their parental rights, or who are sexually violent predators, or who are subject to Megan's Law; may serve as a Senior trial or appellate attorney

² The appellant notes that her former supervisor wrote a letter of recommendation dated July 5, 2018. She states that, although the letter was not submitted to this agency for review, it indicated that "I believe her work over the years . . . justifies her being in the most senior position of Assistant Deputy Public Defender 1, if it is possible to do so."

responsible for the representation of indigent persons charged with serious offenses; does other related work as required.

Based on a review of the PCQ submitted by the appellant, related documentation including an organizational chart, and a telephone interview conducted with the appellant and her supervisor, Agency Services properly determined that the proper classification of her position is Assistant Deputy Public Defender 3. The appellant listed on the PCQ that the majority of her duties (65%) constitute conducting legal research, preparing appellate briefs, volunteering for cases, and completing analysis of the trial record provided to the appellate court. Additionally, the classification determination found that the appellant's duties consisted of providing legal representation on appeal to minor clients who are the subject of child welfare cases brought by the Division of Child Protection and Permanency or other individuals pursuant to Title 9 or Title 30 of the New Jersey Statutes; preparing or filing briefs within the time frames established by law, rules, court order, or the supervisor in Superior Court, Appellate Division for appeals as of right, and where issues warrant, in the New Jersey Supreme Court, trial courts, and federal courts; litigating cases which include but are not limited to filing reply briefs, supplemental briefs, administrative and/or substantive motions; filing petitions for certification, trial court briefs, and/or making appearances in court; arguing appeals orally in the Appellate Division, and where necessary, New Jersey Supreme Court, trial courts, and federal courts; reviewing briefs of other attorneys, as requested, providing to the attorneys and suggesting corrections and/or other observations, and completing the appellate brief review form; and compiling data which includes but is not limited to caseload information, providing timely information to support staff for case management system, maintaining client's files in an orderly fashion, and/or ensuring prompt closure of case files. Such duties are consistent with the duties performed by an Assistant Deputy Public Defender 3.

As Agency Services found, the appellant did not perform duties commensurate with the examples of work of an Assistant Deputy Public Defender 1, such as supervising work operations and/or functional programs and having responsibility for effectively recommending the hiring, firing, promoting, demoting, and/or disciplining employees on a primary basis. A title whose job specification does not contain this clause or a reasonable variation thereof in the "Examples of Work" section is not considered a supervisory title. *See in the Matter of Ruth Ade* (Commissioner of Personnel, decided May 17, 2007). *See also, In the Matter of Sadie Hamer, et al.* (MSB, decided February 22, 2006). Although the appellant indicated on the PCQ that she supervised an attorney in court for one week, the appellant provided no supporting documentation on appeal to show that she completes employee evaluations for employees or is responsible for any systematic supervision of subordinate staff. Incumbents in a supervisory professional level title are required to supervise at least one professional level subordinate who performs functions of a professional nature. In this regard, the record fails to establish that

the appellant has supervisory responsibilities or serves in a leadership capacity over other workers as a primary function.

With respect to the appellant's claims that her former supervisor indicated that she was performing the duties of an Assistant Deputy Public Defender 1, such information does not establish her claims. Her former supervisor did not complete her PCQ and he did not participate in the classification evaluation process. Moreover, the appellant's supervisor indicated on the PCQ that her most important duties are timely submissions of appellate briefs that effectively advocate and advance clients' legal positions and interests. Additionally, recommendations from the appellant's supervisors are not determinative for a classification review, but can be used as pieces of information in evaluating the classification of the appellant's position. *See in the Matter of Jose Quintela* (CSC, decided June 21, 2017).

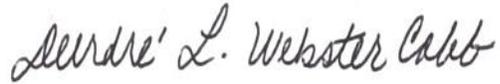
With respect to the appellant's assertions that she is performing duties similar to other employees in Assistant Deputy Public Defender 1 titles or that others in that title do not supervise, a classification appeal cannot be based solely on a comparison to the duties of another position, especially if that position is misclassified. *See In the Matter of Carol Maita, Department of Labor* (Commissioner of Personnel, decided March 16, 1995). Additionally, the fact that some of an employee's assigned duties may compare favorably with some examples of work found in a given job specification is not determinative for classification purposes, since, by nature, examples of work are utilized for illustrative purposes only. Further, it is not uncommon for an employee to perform some duties which are above or below the level of work which is ordinarily performed. For purposes of determining the appropriate level within a given class, and for overall job specification purposes, the definition portion of the job specification is appropriately utilized. Finally, volume of work or job performance are not factors in the classification of positions. Accordingly, there is no basis to disturb the determination of Agency Services that the appellant's position was properly classified as an Assistant Deputy Public Defender 3.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 21st DAY OF NOVEMBER, 2018



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries Christopher Myers
and Director
Correspondence Division of Appeals
 & Regulatory Affairs
 Civil Service Commission
 Written Record Appeals Unit
 P.O. Box 312
 Trenton, New Jersey 08625-0312

c: Nancy Fratz
 William Wander
 Kelly Glenn